

Subject: RE: Untimely Reports

From: "Steven J. Shamburek" <shamburek@gci.net>

Date: Tue, 14 Feb 2006 19:52:47 -0900

To: "Michael W. Sewright" <mws@bpbk.com>, "Herbert Viergutz" <barmar@gci.net>, "Tom Krider" <Krider@OLES.com>

CC: "Pat Stoll" <cps@hvslaw.com>, "Paul Stockler" <paulstockler@aol.com>

Herb,

Tuesday, February 14, 2006 is the date agreed to by the parties and ordered by the Court for the service of expert reports. Shoreside and Metco do not agree to any extension of this deadline. I hope this matter will not require court attention. If it does, we will move for attorney's fees.

Steve

-----Original Message-----

From: Michael W. Sewright [mailto:mws@bpbk.com]

Sent: Tuesday, February 14, 2006 4:18 PM

To: Herbert Viergutz

Cc: Tom Krider; Steve Shamburek; Pat Stoll; Paul Stockler

Subject: Untimely Reports

Herb,

In response to your telefaxed correspondence earlier this afternoon, I do not agree to an untimely expert report or notification of that intent for the first time this afternoon. - Mike

--

Michael W. Sewright

Burr, Pease & Kurtz

810 N Street, Anchorage AK 99501

(907) 276-6100

<http://www.bpk.com>

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Exhibit 4
/ of 4

Subject: Expert Reports

From: "Steven J. Shamburek" <shamburek@gci.net>

Date: Tue, 14 Feb 2006 20:14:27 -0900

To: "Tom Krider" <Krider@OLES.com>, "Michael W. Sewright" <mws@bpbk.com>

CC: "Herbert Viergutz" <barmar@gci.net>, "Paul Stockler" <paulstockler@aol.com>, "Pat Stoll" <cps@hvslaw.com>

Tom,

The deadline established by the court is a date certain that integrates thoughtfully with the other deadlines. Tuesday, February 14, 2006 is the date agreed to by the parties and ordered by the Court for the service of expert reports. Your notice of the individual's name in a pleading in December was neither required nor informative. Your stated reason for delay is a knowing misrepresentation to the court. Mr. Goodwill was and is not necessary for your purported expert to opine on the area he notes in your pleading. In addition, you do not need to depose anyone from Shoreside and/or Metco and thus there is no basis for the motion for extension regarding these two claimants.

You purported to request our agreement at about the same time this morning that Traeger was preparing a motion for a extension and representing that he could not contact us; we were busy meeting the deadline. The court may regard your strategy as not in good faith.

This is a written request for you to withdraw your motion. I hope this matter will not require court attention. If it does, we will move for attorney's fees. This matter is entering its ninth year and must be resolved without further delay. Justice delayed is justice denied.

Steve

From: Tom Krider [mailto:Krider@OLES.com]

Sent: Tuesday, February 14, 2006 10:27 AM

To: Michael W. Sewright

Cc: Steve Shamburek; Herbert Viergutz; Paul Stockler; Pat Stoll; John Smithson

Subject: RE: Depos of Nugget & Agents

Mike,

I have not heard any more about Randy's situation, so I don't know whether he is available on the 28th. However, I still have not been provided any information regarding the scope of the inquiry or any justification for reopening the deposition. Absent an agreement on the scope of the deposition before hand, I will have no choice but to move to quash, which will likely delay getting these depositions wrapped up. Please provide me

Exhibit 4
2 of 4
3/1/2006 1:11 PM

Subject: RE: Late Expert Report
From: "Steven J. Shamburek" <shamburek@gci.net>
Date: Wed, 15 Feb 2006 19:00:39 -0900
To: "Herbert A Viergutz" <barmar@gci.net>
CC: "Michael W. Sewright" <mws@bpk.com>

Herb,

You stated to me after a deposition in December that you were obtaining an expert regarding the bad faith claims against USF&G. There is one deadline for all expert reports established in the Court's order, namely February 14. That deadline gave the parties six weeks to undertake any necessary additional discovery. That deadline controls without the need for the Court to state expressly that the deadline trumps other default deadlines in the rules. No one asked for nor did the Court order a rebuttal deadline. The claimants retained an expert who provided an opinion in compliance with the deadline set forth in the Court's order. Because your current statement about contacting an expert may only be a bluff and until a report is proffered, a motion to strike is premature. If an untimely report is presented by an expert who was not properly disclosed, an appropriate motion will be filed when it is timely. The judge should recognize what is going on.

Steve

From: Herbert A Viergutz [mailto:barmar@gci.net]
Sent: Wednesday, February 15, 2006 12:59 PM
To: Steven J. Shamburek
Subject:

I obviously do not agree with your interpretation. The Court Order does not address rebuttal reports, so the 30 day provision applies. You can surely take it to the Court, but this one for you is a dead loser. You may not like that, but the Rule is clear, and so is the omission in the Order i.e. the Rule controls on a rebuttal report. You must really be afraid your "expert" analysis is wrong. My position will not change.

Exhibit 4
3 of 4

Subject: RE: Untimely Reports

From: "Steven J. Shamburek" <shamburek@gci.net>

Date: Wed, 15 Feb 2006 08:49:52 -0900

To: "'Herbert A Viergutz'" <barmar@gci.net>

CC: "'Michael W. Sewright'" <mws@bpbk.com>

Herb,

The rule states at the outset: "These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, . . ." The court provided direction and ordered simultaneous exchange. The claimants obtained an expert report in reliance on the statement by USF&G that it would be obtaining an expert report. The court surely is not interested in getting involved in a matter which is clearly addressed on the face of its order.

Steve

-----Original Message-----

From: Herbert A Viergutz [mailto:barmar@gci.net]

Sent: Wednesday, February 15, 2006 6:19 AM

To: Steven J. Shamburek

Subject: Re: Untimely Reports

You do what you have to, but my expert report is timely pursuant to Rule 26(b)(2)(C), and will be forwarded on or before its due date of March 16. My expert will be available for deposition on March 28, and I intend to depose yours the afternoon of March 27.

----- Original Message -----

From: "Steven J. Shamburek" <shamburek@gci.net>

To: "'Michael W. Sewright'" <mws@bpbk.com>; "'Herbert Viergutz'"

<barmar@gci.net>; "'Tom Krider'" <Krider@OLES.com>

Cc: "'Pat Stoll'" <cps@hvsllaw.com>; "'Paul Stockler'" <paulstockler@aol.com>

Sent: Tuesday, February 14, 2006 7:52 PM

Subject: RE: Untimely Reports

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To: Herbert Viergutz

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4 of 4